

Senate File 2348 - Enrolled

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1 1 SENATE FILE 2348
1 2
1 3 AN ACT
1 4 RELATING TO THE MANAGEMENT OF COOPERATIVE ASSOCIATIONS.
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1 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 7
1 8 Section 1. NEW SECTION. 499.36A STANDARDS OF CONDUCT FOR
1 9 DIRECTORS.
1 10 1. A director shall discharge the duties of the position
1 11 of director in good faith, in a manner the director reasonably
1 12 believes to be in the best interests of the association, and
1 13 with the care that a person in a like position would
1 14 reasonably believe appropriate under similar circumstances. A
1 15 person who so performs those duties is not liable by reason of
1 16 being or having been a director of the cooperative.
1 17 2. a. A director is entitled to rely on information,
1 18 opinions, reports, or statements, including financial
1 19 statements and other financial data, in each case prepared or
1 20 presented by any of the following:
1 21 (1) One or more officers or employees of the association
1 22 whom the director reasonably believes to be reliable and
1 23 competent in the matters presented.
1 24 (2) Legal counsel, public accountants, or other persons as
1 25 to matters that the director reasonably believes are within
1 26 the person's professional or expert competence.
1 27 (3) A committee of the board upon which the director does
1 28 not serve, duly established by the board as to matters within
1 29 its designated authority, if the director reasonably believes
1 30 the committee to merit confidence.
1 31 b. Paragraph "a" does not apply to a director who has
1 32 knowledge concerning the matter in question that makes the
1 33 reliance otherwise permitted by that paragraph unwarranted.
1 34 3. A director who is present at a meeting of the board
1 35 when an action is approved by the affirmative vote of a
2 1 majority of the directors present is presumed to have assented
2 2 to the action approved, unless any of the following applies:
2 3 a. The director objects at the beginning of the meeting to
2 4 the transaction of business because the meeting is not
2 5 lawfully called or convened, and does not participate in the
2 6 meeting after the objection, in which case the director is not
2 7 considered to be present at the meeting for any purpose of
2 8 this chapter.
2 9 b. The director votes against the action at the meeting.
2 10 c. The director is prohibited by a conflict of interest
2 11 from voting on the action.
2 12 4. In discharging the duties of a director, the director
2 13 may, in addition to consideration of the effects of any action
2 14 on the association and its members, consider any or all of the
2 15 following community interest factors:
2 16 a. The effects of the action on the association's
2 17 employees, suppliers, creditors, and customers.
2 18 b. The interests of and effects on communities and the
2 19 cooperative system in which the association and its members
2 20 operate.
2 21 c. The long-term as well as short-term interests of the
2 22 association and its members, including the possibility that
2 23 these interests may be best served by the continued
2 24 independence of the association.
2 25 Sec. 2. NEW SECTION. 499.37A STANDARDS OF CONDUCT FOR
2 26 OFFICERS.
2 27 1. An officer, when performing in such capacity, shall act
2 28 in conformity with all of the following:
2 29 a. In good faith.
2 30 b. With the care that a person in a like position would
2 31 reasonably exercise under similar circumstances.
2 32 c. In a manner the officer reasonably believes to be in
2 33 the best interests of the association.
2 34 2. In discharging the officer's duties, an officer who
2 35 does not have knowledge that makes such reliance unwarranted
3 1 is entitled to rely on any of the following:
3 2 a. The performance of properly delegated responsibilities
3 3 by one or more employees of the association whom the officer

3 4 reasonably believes to be reliable and competent in performing
3 5 the responsibilities delegated.

3 6 b. Information, opinions, reports, or statements,
3 7 including financial statements and other financial data,
3 8 prepared or presented by one or more employees of the
3 9 association whom the officer reasonably believes to be
3 10 reliable and competent in the matters presented.

3 11 c. Legal counsel, public accountants, or other persons
3 12 retained by the association as to matters involving skills or
3 13 expertise the officer reasonably believes are matters within
3 14 the particular person's professional or expert competence or
3 15 as to which the particular person merits confidence.

3 16 3. An officer shall not be liable as an officer to the
3 17 association or its members for any decision to take or not to
3 18 take action, or any failure to take any action, if the duties
3 19 of the officer are performed in compliance with this section.
3 20 Whether an officer who does not comply with this section is
3 21 liable depends in such instance on applicable law, including
3 22 those principles of section 499.36A that have relevance.

3 23 Sec. 3. NEW SECTION. 499.41A GREATER VOTING
3 24 REQUIREMENTS.

3 25 An amendment to the articles of incorporation of an
3 26 association that adds, changes, or deletes a greater voting or
3 27 quorum requirement by the members than required by this
3 28 chapter must be adopted by the voting or quorum requirements
3 29 then in effect or proposed to be adopted, whichever is
3 30 greater.

3 31 Sec. 4. Section 499.47B, subsections 1 and 3, Code 2007,
3 32 are amended to read as follows:

3 33 1. The board of directors shall adopt a resolution
3 34 recommending the sale, lease, exchange, or other disposition
3 35 and directing the submission thereof to a vote at a meeting of
4 1 the membership, which may either be an annual or a special
4 2 meeting. The board of directors may condition its
4 3 recommendation and submission of the sale, lease, exchange, or
4 4 other disposition to the members for approval under this
4 5 section on any basis.

4 6 3. At the meeting the membership may authorize the sale,
4 7 lease, exchange, or other disposition and may fix, or may
4 8 authorize the board of directors to fix, any or all of the
4 9 terms and conditions thereof and the consideration to be
4 10 received by the cooperative association. Such authorization
4 11 shall for the sale, lease, exchange, or other disposition
4 12 shall be approved by the members as follows:

4 13 a. Except as provided in paragraph "b", the sale, lease,
4 14 exchange, or other disposition must be approved if by a
4 15 two-thirds vote of the members vote affirmatively on a ballot
4 16 in which a majority of all voting members participate.

4 17 b. (1) If the cooperative association's articles of
4 18 incorporation require approval by more than two-thirds of its
4 19 members on a ballot in which a majority of all voting members
4 20 participate, the sale, lease, exchange, or other disposition
4 21 must be approved by the greater number as provided in the
4 22 articles of incorporation.

4 23 (2) If the board of directors adopts additional conditions
4 24 for the approval of the sale, lease, exchange, or other
4 25 disposition as provided in subsection 1, the additional
4 26 conditions must be satisfied in order for the sale, lease,
4 27 exchange, or other disposition to be approved.

4 28 Sec. 5. NEW SECTION. 499.47D CONSIDERATION OF
4 29 ACQUISITION PROPOSALS == COMMUNITY INTERESTS.

4 30 1. A director, in determining what is in the best interest
4 31 of the association when considering a tender offer or proposal
4 32 of acquisition, proposal of merger, proposal of consolidation,
4 33 or similar proposal, may, in addition to consideration of the
4 34 effects of any action on the association and its members,
4 35 consider any or all of the community interest factors

5 1 described in section 499.36A.

5 2 2. If on the basis of the community interest factors
5 3 described in section 499.36A, the board of directors
5 4 determines that a tender offer or proposal to acquire, merge,
5 5 or consolidate the association or any similar proposal is not
5 6 in the best interests of the association, it may reject the
5 7 tender offer or proposal. If the board of directors rejects
5 8 any such tender offer or proposal, the board of directors has
5 9 no obligation to facilitate, to remove any barriers to, or to
5 10 refrain from impeding the tender offer or proposal.

5 11 Consideration of any or all of the community interest factors
5 12 is not a violation of the business judgment rule or of any
5 13 duty of the director to the members, or a group of members,
5 14 even if the director reasonably determines that a community

5 15 interest factor or factors outweigh the financial or other
5 16 benefits to the association or a member or group of members.
5 17 Sec. 6. Section 499.64, Code 2007, is amended to read as
5 18 follows:
5 19 499.64 VOTE OF MEMBERS.
5 20 1. The board of directors of a cooperative association,
5 21 upon ~~approving~~ recommending a plan of merger or consolidation
5 22 ~~be approved by the members~~, shall, by motion or resolution,
5 23 direct that the plan be submitted to a vote at a meeting of
5 24 members, which may be either an annual or special meeting.
5 25 ~~The board of directors may condition its recommendation and~~
5 26 ~~submission of a plan of merger or consolidation to the members~~
5 27 ~~for approval under this section on any basis.~~ Written notice
5 28 shall be given not less than twenty days prior to the meeting,
5 29 either personally or by mail to each voting member and
5 30 shareholder of record. The notice shall state the time,
5 31 place, and purpose of the meeting, and a summary of the plan
5 32 of merger or consolidation shall be included in or enclosed
5 33 with the notice.
5 34 2. At the meeting, a ballot of the members who are
5 35 entitled to vote in the affairs of the association shall be
6 1 taken on the proposed plan of merger or consolidation. The
6 2 plan of merger or consolidation shall be approved ~~if~~ as
6 3 follows:
6 4 a. ~~Except as provided in paragraph "b", the proposed plan~~
6 5 ~~of merger or consolidation must be approved by a two-thirds~~
6 6 ~~vote of the members vote affirmatively on a ballot in which a~~
6 7 ~~majority of all voting members participate.~~
6 8 b. (1) ~~If the cooperative association's articles of~~
6 9 ~~incorporation require approval by more than two-thirds of its~~
6 10 ~~members on a ballot in which a majority of all voting members~~
6 11 ~~participate, the proposed plan of merger or consolidation must~~
6 12 ~~be approved by the greater number as provided in the articles~~
6 13 ~~of incorporation.~~
6 14 (2) ~~If the board of directors adopts additional conditions~~
6 15 ~~for the approval of the plan of merger or consolidation as~~
6 16 ~~provided in subsection 1, the additional conditions must be~~
6 17 ~~satisfied in order for the plan of merger or consolidation to~~
6 18 ~~be approved.~~
6 19 3. ~~Voting by members~~ may be by mail ballot notwithstanding
6 20 any contrary provision in the articles of incorporation or
6 21 bylaws.

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6 25 _____
6 26 JOHN P. KIBBIE
6 27 President of the Senate

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6 30 _____
6 31 PATRICK J. MURPHY
6 32 Speaker of the House

6 33 I hereby certify that this bill originated in the Senate and
6 34 is known as Senate File 2348, Eighty-second General Assembly.
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7 4 MICHAEL E. MARSHALL
7 5 Secretary of the Senate

7 6 Approved _____, 2008
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7 10 CHESTER J. CULVER
Governor